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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,282	12/15/2003	Hiroshi Nakahata	AA556C	4285

27752 7590 09/10/2007
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EXAMINER

HAND, MELANIE JO

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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09/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/736,282

Applicant(s)

NAKAHATA ET AL.

Examiner

Melanie J. Hand

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Appeal Brief

In view of the appeal brief filed on June 15, 2007, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

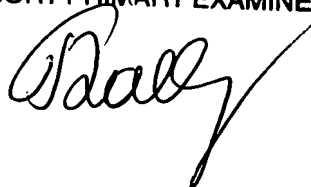
(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

Tatyana Zalukaeva

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER



Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakahata (U.S. Patent No. 5,873,868) in view of Malowaniec (U.S. Patent No. 6,049,915).

With respect to **claim 1**: Nakahata teaches an absorbent article 20 having a pair of longitudinal side edges 50 and a first end edge 52, a second end edge 52, a first waist panel 46 adjacent to the first end edge 52, a second waist panel 44 adjacent to the second end edge 52, a crotch panel 48 positioned between the first and second waist panels, and a side panel 30 extending laterally outwardly from the first or second waist panel, the absorbent article 20 comprising a liquid pervious topsheet 24, an absorbent core 28 disposed underneath the topsheet 24, and a chassis layer 22, wherein the first or second waist panel 46,44 comprises a portion of the chassis layer 22, the topsheet 24 including a plurality of spaced discontinuities 206 regularly disposed in at least a portion of the first or second waist panel 46,44 such that when the waist panel is subject to tension the discontinuities 206 provide openings that extend through the topsheet 24 thereby providing said topsheet 24 with extensibility in the transverse direction; and an extensibility controlling means in the form of an elastically extensible chassis layer 22 to control the extensibility of the topsheet 24, wherein the extensibility controlling means inhibits the topsheet layer 24 from extending beyond extensibility causing breakage of said topsheet. (Col. 3, lines 13-67, Col. 10, lines 11-13, Col. 11, lines 1-21, Col. 12, lines 16-22)

Nakahata teaches that the discontinuities 206 are present in topsheet 24 and thus does not teach that the discontinuities are present in chassis layer 22. Malowaniec teaches an absorbent article having an absorbent core in the form of elastic layer 11 disposed between

Art Unit: 3761

topsheet 13, and a chassis layer 12. Both chassis layer 12 and topsheet 13 include a plurality of spaced discontinuities 14 regularly disposed in at least a portion of the first or second waist panel (inasmuch as the incisions occur throughout the entire layer 12) such that when the waist panel is subject to tension the discontinuities 14 provide openings that extend through the chassis layer 12. The limitation of providing the chassis layer with extensibility in the transverse direction flows necessarily from the teachings of Malowaniec as the article of Malowaniec meets the claim limitations that pertain to the discontinuities and to the extensibility controlling means (layer 11 of Malowaniec). Since Malowaniec teaches that both topsheet 13 and chassis layer 12 have discontinuities that lend extensibility to the otherwise inelastic material of topsheet 13 and chassis layer 12, and extensibility provides a more comfortable fit to the wearer during use, it would be obvious to one of ordinary skill in the art to modify the article of Nakahata so as to have discontinuities located in the chassis layer as well as the topsheet as taught by Malowaniec to provide extensibility to the chassis layer to allow a more comfortable fit to the wearer. ('915, whole document)

With respect to **claim 2**: The extensibility causing breakage of the chassis layer is between 10-500%, which overlaps the range of more than 20 %. (Col. 14, lines 10-12)

With respect to **claim 3**: Nakahata teaches the same materials for topsheet 24 as those set forth in the claimed disclosure. Thus, while Nakahata is silent regarding a percentage elongation of the topsheet associated with a tension force of 125 grams/25mm, this percentage elongation is considered herein to be an inherent property of the topsheet 24. The burden is therefore upon the applicant to show that these properties are not inherent properties of the topsheet taught by

Art Unit: 3761

Nakahata by demonstrating that the instant invention and the claimed invention are not equivalent. See *In re Fitzgerald*, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980)

With respect to **claim 4**: The extensibility controlling means is disposed in the first or second waist panel 46,44 in the transverse direction across at least the transverse width of the plurality of spaced discontinuities 206. (Fig. 2, Col. 7, line 65 – Col. 8, line 9, Col. 11, lines 1-8)

With respect to **claim 5**: The extensibility controlling means (backsheet 26) is present along, and thus disposed along, the end edge. (Col. 7, line 65 – Col. 8, line 9)

With respect to **claim 6**: The extensibility controlling means is a stretchable elastic material, i.e. the elastically extensible backsheet 26. (Col. 4, lines 33-36)

With respect to **claim 7**: The chassis layer 22 comprises a liquid impervious material. (Col. 3, lines 32-35, Col. 4, lines 5-12)

With respect to **claim 8**: The absorbent article 20 comprises a liquid impervious sheet 26 disposed between the absorbent core and the chassis layer where the chassis layer is a holder and the diaper comprises a holder and liner wherein the liner contains the topsheet 24, backsheet 26 and core 28. (Col. 3, lines 39-43)

With respect to **claims 9,10**: Nakahata teaches that the core can be of various shapes and sizes. (Col. 7, lines 5-12) Thus while Nakahata does not explicitly teach that the absorbent core 28 does not extend into the first or second waist panel in which the discontinuities 206 are

Art Unit: 3761

provided, it would be obvious to one of ordinary skill in the art to modify the article of Nakahata to meet this limitation, as the core is substantially inelastic and would inhibit the elasticity of the topsheet 24 and may interfere with the function of extensibility controlling means 26, which is contrary to one of the problems sought to be solved by Nakahata, i.e. to provide an elastically extensible topsheet 24.

With respect to **claim 11**: The discontinuities 206 are slits. (Col. 11, lines 5-9)

With respect to **claim 12**: The discontinuities 206 comprise a plurality of cuts wherein the cuts comprise rectilinear cuts. (Col. 11, lines 5-9)

With respect to **claim 13**: The discontinuities 206 are regularly disposed as a pattern 204 in the chassis layer 22. (Col. 11, lines 1-9)

With respect to **claim 14**: The discontinuities 206 are oriented such that the discontinuities extend in a longitudinal direction. (Fig. 2, Col. 11, lines 9-13)

With respect to **claim 15**: The discontinuities 206 are aligned in the longitudinal direction in an array of columns and rows seen in Fig. 2 such that the discontinuities form a plurality of laterally spaced columns 208 as seen in Fig. 4 which extend in the longitudinal direction. (Col. 11, lines 16-21)

Art Unit: 3761

With respect to **claim 16**: The discontinuities 206 are located in the topsheet 24 which is treated to be hydrophobic and thus the discontinuities 206 comprise a plurality of edges wherein the edges are treated. (Col. 6, lines 9-12)

With respect to **claims 17,18**: The discontinuities 206 are arranged such that the application of a tensile force to the chassis layer results in a plurality of equal area openings having an area from about 1 mm² to about 2500 mm². (Col. 12, lines 16-22)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand

Application/Control Number: 10/736,282

Page 8

Art Unit: 3761

Examiner
Art Unit 3761

August 28, 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in cursive script, appearing to read 'T. Zalukaeva', with a long horizontal stroke extending to the right.